

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re Navidea Biopharmaceuticals Litigation

Case No. 1:19-cv-01578-VEC

[PROPOSED] ORDER GRANTING
DEFENDANT'S SUMMARY
JUDGMENT

THIS MATTER having been opened to the Court by Gregory Zimmer, Esq. on behalf of Defendant Michael M. Goldberg M.D. (“Defendant”), on a Motion for Summary Judgment as to all of Plaintiff Navidea Biopharmaceutical Inc.’s (“Plaintiff”) remaining claims, and Defendant’s counterclaims and third-party claims against Plaintiff and Third-Party Defendant Macrophage Therapeutics, Inc. (“Third-Party Defendant”), on the issue of liability, pursuant to Federal Rule of Civil Procedure 56, and the Court, having reviewed the submissions of the parties in support thereof and in opposition thereto, and having considered the arguments of counsel, if any, in connection with this Motion; and for good cause shown:

IT IS on this ____ day of _____, 202____,

ORDERED that Defendant’s Motion for Summary Judgment be, and hereby is, **GRANTED** in its entirety in favor of Defendant and against Plaintiff and Third-Party Defendant as follows:

ORDERED that Plaintiff’s remaining claims asserted in its First, Second and Third Causes of Action are hereby **DISMISSED**; it is further

ORDERED that summary judgment is **GRANTED** on the issue of liability as to Defendant's Counterclaim and Third-Party Claim asserted in Counts I and II of the Answer, respectively; it is further

ORDERED that Plaintiff shall fulfill its obligations under the parties' August Agreement by (i) releasing the 5,000,000 shares in escrow and removing the restrictive legends not required by Reg. D; (ii) removing the restrictive legends, not required by Reg. D, from the 12,777,274 shares of Navidea common stock that were issued under Reg. D; (iii) reissuing 722,726 shares under Reg. D without any restrictive legends not required by Reg. D; and (iv) issuing the remaining 5,000,000 shares pursuant to Reg. D without any restrictive legends not required by Reg. D; it is further

ORDERED that issue of damages as to Counts I and II, resulting from Plaintiff and Third-Party Defendant's failure to and/or delay in issuing Navidea common stock and Macrophage Super Voting Common Stock in accordance with the August Agreement shall be reserved for trial on a date to be determined by the Court; and it is further

ORDERED that pursuant to the August Agreement, Defendant is entitled to recover his reasonable attorneys' fees and costs in connection with this action.

Date: _____, 2023
New York, New York

Hon. Valerie E. Caproni
United States District Judge